

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-277

OTIS MILLS

APPELLANT

VS. FINAL ORDER
SUSTAINING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF JUVENILE JUSTICE
J. MICHAEL BROWN, APPOINTING AUTHORITY

APPELLEE

** ** *

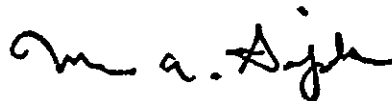
The Board at its regular February 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 14, 2014, having considered Appellant's exceptions, oral arguments, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 19th day of February, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Adam Adkins
Hon. Paul Fauri
Joslyn Olinger-Glover

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This matter came on for an evidentiary hearing on October 16, 17 and 29, 2013, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Roland Merkel, Hearing Officer. The proceedings were recorded by audio/video equipment and authorized by virtue of KRS Chapter 18A.

Appellant, Otis Mills, was present and represented by the Hon. Paul Fauri. Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and represented by the Hon. Adam Adkins. Also present as Agency representative was Commissioner Hasan Davis.

Otis Mills has appealed the disciplinary action taken against him in the nature of a twenty-day suspension. The Appellee is required to prove, by a preponderance of the evidence, that the twenty-day suspension of the Appellant from his position as Juvenile Facilities Superintendent III at the Adair Youth Development Center, effective November 27, 2012, and a number of enumerated days thereafter was taken with just cause and was neither excessive nor erroneous.

The rule separating witnesses was invoked and employed throughout the course of the proceedings. Preliminary matters were addressed prior to witness testimony.

On October 15, 2013, the day before the first day of hearing, Appellee filed an Amended Witness List to include Michael Wall as one of its witnesses. Appellant objected to the Amended Witness List on the grounds that Mr. Wall had never before been listed by the Appellee as a witness and Appellant, therefore, was not prepared at this time for Mr. Wall's testimony. Appellee failed to identify such witness as least five days prior to the evidentiary hearing as required by KRS 13B.090(3). Appellee responded to the objection and advised it intended to call Mr. Wall as its first witness on direct examination.

The Hearing Officer stated that the purpose of KRS 13B.090(3) is to prevent undue surprise to any party, and to provide due process to all parties through a procedure fair to all. It would be prejudicial to Appellant to compel him to cross-examine Mr. Wall on such short notice. However, the Hearing Officer declared Mr. Wall would be allowed to testify today on direct examination only, and the Appellant shall be given sufficient time in which to prepare a cross-examination of this witness at a later date. Appellant advised he had not yet decided whether to cross-examine Mr. Wall, and preserved his objection.

The Hearing Officer issued a ruling which was incorporated in the Interim Order of October 18, 2013. The entirety of such Interim Order is incorporated by reference herein.

The parties next reviewed the discovery requests and documents produced in response to same. Each of the parties presented opening statements.

BACKGROUND

1. The first witness called by the Appellee was **Michael Wall**. Appellant restated his objection. Mr. Wall was present with his attorney, the Hon. Samuel Hayward, Jr.

2. Since 2002, Wall has been employed by the Department of Juvenile Justice as a Youth Worker Supervisor at the Adair Youth Development Center (AYDC), on an almost daily basis. He had contact with Superintendent Otis Mills on an almost daily basis.

3. One afternoon in 2010, Mills telephoned Wall at work and asked if he knew anyone who could give him a line on that night's Kentucky basketball game. Kentucky was in the NCAA Final Four. Wall testified, "I know a lot of people. If someone wants to know something about Columbia, I would be the person to ask." Wall knew an individual that bet on ballgames. He called the individual, asked for the line on the Kentucky game, and later passed that on to Mr. Mills.

4. Mills asked, "Can you make a bet for me?" Wall stated he probably could. Mills provided an alias to use to make a \$50 bet. Wall advised he would just tell the friend to place the bet in his own name. The telephone conversations had been made to Wall at work. When Wall telephoned Mills, he called him on his own cell phone.

5. During the following college football season, August or September 2010, Mills started betting again through Wall. Mills either approached Wall at work or by telephone. The bets started small with a game or two, and a betting level of anywhere from \$25 to \$300 - \$400 per bet.

6. Whenever Mills lost a bet, he gave Wall the money at work and Wall took it to his friend. If Mills won a bet, Wall picked up the winnings from his friend and brought it back to Mills at work. Wall took a "fair amount" of bets while he was at work. Mills had also been working at the times these bets were placed.

7. The bets continued during basketball season of 2010 to 2011, football season of 2011 to 2012, and basketball season of 2011 to 2012. The betting stopped during the basketball season of 2012 because Mills owed over \$1,000. He got behind and could not pay.

8. Mills started placing bets by directly texting Wall's friend. Mills sent copies of such texts to Wall. Wall never asked Mills to stop using him to place bets. He feared he would suffer consequences at work as a result.

9. Wall identified Appellee's Exhibit 1 as a record of his own cell phone calls for a certain period in 2011.¹ Mills' phone number is highlighted. Virtually all of the calls made by Mills pertained to placing bets.

10. He identified Appellee's Exhibit 2 as text messages for bets placed by Mills which Wall received on his personal cell phone.² Some of the texts were sent to Wall while he was at work. Wall was required to keep a record of wins and losses.

11. The betting interfered with Wall's work. He had to call in the bets and keep track of the bets, all of which kept him off the floor. He had to look up the betting lines on all the games using the state computer in his office.

12. Shane Bowling, James Roberts, and Ron Long each spoke to Wall about his work performance and spending too much time in the office. They knew what was going on. Wall was told he could not place bets while at work.

13. Bowling told Wall to stay out of the office. When Wall asked him how to do that in view of placing bets for the boss, Bowling said he did not know but that he would talk to Mills.

14. On one occasion, Wall placed money in an envelope that Mills won on a bet. He gave the envelope to Mr. Bowling and Ms. Cundiff, at the request of Mills, as they were going to London and could deliver it to Mills.

¹ Admission of Appellee's Exhibit 1 was withheld, subject to cross-examination. It was eventually admitted through the testimony of Steven Potts.

² Admission of Appellee's Exhibit 2 was withheld, subject to cross-examination. It was eventually admitted through the testimony of Steven Potts.

15. In the fall of 2011 or early 2012, Wall had taken a video of Mills placing a bet while at work. The bets were placed from Mills' office. Mills, on his state computer, looked up information on various games on the website scoresandodds.com. He then gave Wall a list of bets. Wall identified Appellee's Exhibit 3 as a copy of the video he had taken on that occasion.³ The video was played at the hearing and viewed by the witness, and the parties.

16. Wall had given an interview and a copy of the video to Investigator Steve Potts. He identified Appellee's Exhibit 4 as a summary of the interview he gave to Potts, and today stood by the statements contained therein.⁴

17. **Shane Bowling**, who since April 2012 has been a Criminal Intelligence Analyst for the Kentucky State Police, was the next witness. From 2009 to 2012, he had been employed by the Department of Juvenile Justice at the AYDC, as a Youth Services Program Supervisor. He was under the supervision of Mills. Bowling supervised five youth supervisors including Michael Wall.

18. In 2010, while riding in a car with Mills from Columbia to London, they talked about sports. The NCAA basketball tournament was on-going and Mills asked Bowling whether Wall knew any bookies or anyone with whom he could make bets. Mills then telephoned Wall and determined Wall had such a contact. He asked Wall to get a line on the games and call him back. Bowling and Mills had just left the facility and Wall was at work at that time. Shortly thereafter, Bowling heard Mills place his bets with Wall on the telephone.

19. When football season began, the betting started again. Bowling was aware through conversations with Mills and Wall that this occurred. Mills told Bowling he had so much bet on this game, that he had won so much on that game. Wall had also shown Bowling text message bets on his cell phone made by Mills. There were approximately ten to twenty such betting texts. Bowling testified that using a cell phone in the facility was a violation of policy.

20. Wall spoke on a weekly basis about the betting situation because it was a burden to him. He had received calls during lunch and at home. There were several different telephone calls seeking information on games and placing bets. Bowling told Wall he needed to stop doing this. Wall advised he could not stop because he was doing this for the boss and that he would be "blackballed"; his schedule would be changed and he would be moved to a different shift.

21. The entire situation became "a huge burden" to Bowling. It was one of the reasons that ultimately led him to look for another job. In late 2010 or early 2011, Bowling told

³ Admission of Appellee's Exhibit 3 was withheld, subject to cross-examination.

⁴ Admission of Appellee's Exhibit 4 was withheld, subject to cross-examination.

Mills these telephone calls interfered with his ability to supervise Wall. Mills assured him the betting would stop.

22. Despite his conversation with Mills, the telephone calls apparently continued. Wall confessed that Mills told him to hide the telephone calls from Bowling. Bowling could do nothing further about the situation and tried to ignore it.

23. He learned that James Roberts was aware of the gambling. Roberts spoke to Bowling about the matter. Soon thereafter, Ron Long called a meeting. Present at the meeting were James Roberts, Ron Long, Shane Bowling, and Otis Mills. Mills started the meeting by stating, "Guys, what's the f***ing problem?"⁵ He continued, "We see things all the time that are against policy and we don't address it; why is my issue any different than that?" Roberts told him, "You and one of your supervisors are engaged in illegal activity in the facility" and that he could not be a part of that; that it had to stop. Mills told everyone that it had stopped. He downplayed the matter, and said he would do it on his personal time.

24. Ron Long was Assistant Superintendent. James Roberts and Shane Bowling were Youth Services Program Supervisors. Michael Wall and four others were Youth Supervisors.

25. Bowling identified Appellant's Exhibit 1 as the 2010 Annual Performance Evaluation he did for Michael Wall, including all interim reports. He felt Wall was a good worker. In completing the evaluation, Bowling did not mention or consider the betting incidents.

26. Before Mills had been hired, there existed many complaints about the facility. "It definitely improved" after Mills became the Superintendent.

27. Bowling was interviewed by Investigator Steven Potts. He identified Appellee's Exhibit 5 as a summary of the statement he gave at that time.

28. The next witness was **James Roberts**. For the past three years Mr. Roberts has been a Youth Services Program Supervisor at the AYDC where he supervises the Youth Worker Supervisors. He has been at Adair since it opened in 2001.

29. Approximately two years ago in the fall of 2011, he was making rounds at the facility. As direct supervisor of Michael Wall he noticed Wall was in his office on a cell phone. Wall was supposed to be out on the floor performing his duties. Use of a cell phone during work hours is a policy violation.

30. Roberts entered the office and noticed Wall had a piece of notebook paper. He saw the paper contained numbers: \$25 and \$50, as well as a list of sports teams. Wall indicated

⁵ Expletive deleted.

he was making sports bets for Mills. Roberts told him he needed to be out on the floor and not making bets.

31. Later that day he again spoke to Wall who told him he was placing bets through a bookie; that it had been going on for some time and he was even getting calls at home from Mills.

32. A day or two later, Roberts spoke to his own supervisor Mr. Long, told him about the situation and asked for his advice.

33. Several days later Bowling and Roberts were called to Long's office. Mills was present and started the meeting by saying, "What the F***'s the problem?"⁶ Roberts explained he had discovered Wall placing bets from the office; that it placed Roberts in a difficult situation.

34. Mills acknowledged he placed illegal bets, but tried to compare it to fantasy football activities that took place on the premises. Mills stated he would not do it anymore within the building. After that date Roberts did not hear anything further about gambling.

35. He identified Appellant's Exhibit 2 as the 2011 Annual Employee Performance Evaluation he did for Michael Wall. Nothing in that evaluation mentioned gambling, and that incident did not play a part in Roberts' evaluation of Wall.

36. **Ron Long** was the next witness. He has been employed at the AYDC since it opened in 2001. He is currently the Assistant Superintendent.

37. In 2011, Shane Bowling came to him and advised he could no longer supervise Mike Wall. Bowling had found Wall on the telephone with Mills and they were making bets. Long told him to continue to supervise Wall and tell Wall that he is to leave his cell phone in the break room mailbox.

38. Subsequently, James Roberts came to Long and related he had seen Wall in the office with a sheet listing numbers and sports teams.

39. When Mills came to work later that day, Long told him about the two conversations he had just had. Mills insisted the individuals be called up to the office and they would talk about it.

40. Later that day, Long met with Mills, Roberts, and Bowling. They started talking about the issue. No one started the meeting with a profanity. Mills said he did not realize the matter was a big issue, that it took a lot of time at work, or that Wall was at work during these

⁶ Expletive deleted.

times. He told everyone, "If it's a problem, I'll take care of it; I'll stop." Mills had stated he and Wall were betting through Wall's friend.

41. Long had observed the positive changes in the facility that occurred after Mills became the superintendent. Mills came from a treatment background and applied that experience to the children. That had not been done before at AYDC. Isolations were down 90 percent since 2004. Assaults by youth in 2004 to 2005 were down 80 to 90 percent. Previously reported 1,800 Critical Incident Reports also dropped in number.

42. In 2012, Roberts and Long made the decision to place Wall on third shift. He needed additional supervision and, although having previously been placed on third shift to improve his work performance, his improved performance was short-lived.

43. **Gary Sewell**, Division Director of the Southeast Region, was the next witness. Sewell supervises several facilities for the Department of Juvenile Justice including the AYDC.

44. Mike Wall traveled to Sewell's office in Breathitt County and met with him to discuss the gambling in which he and Mills had been engaged. Mills had placed bets through Wall to a bookie. Sewell told Wall he would report the gambling issue up the chain.

45. Sewell called Deputy Commissioner of Operations, Diana McGuire, and related the conversation he had with Michael Wall. McGuire said she would notify the Office of Investigations (OOI), [now Internal Investigations Bureau (IIB)].

46. A few days later while he was in London, Sewell told Mills about Wall's allegations. Mills acknowledged he had placed bets through Wall.

47. McGuire suggested Sewell draft a request for disciplinary action. He identified Appellee's Exhibit 6 as the document he drafted and sent. In September or October of 2012, a meeting took place in the Commissioner's office. Present were Gary Sewell, Joslyn Olinger-Glover, Sherre Smith-Jones, Diana McGuire, and Commissioner Hasan Davis. The Commissioner stated he was going to send an intent to dismiss letter to Mills on the gambling matter. Sewell stated he did not agree with that level of discipline, and a heated conversation ensued. Sewell related Mills' good work history, and that he admittedly "messed up" while having admitted he should not have done it at work; that the gambling had actually stopped six months before Mike Wall had visited Sewell. The Commissioner stated he did not want to dismiss Mills, but the intent to dismiss would get his attention.

48. Sewell had no input on the ultimate disciplinary decision. He was not involved in the process after meeting in the Commissioner's office. He had later been told by McGuire that

a fifteen-day suspension would be issued. Sewell later learned that the suspension was set for twenty days. Mills had no prior disciplinary actions against him.

49. Mills had done a good job at work. The children were not affected by what he had done in regard to betting. Sewell probably would have recommended a three to five-day suspension. He was well aware of the evaluations he had done for Mills, and that all were "Outstanding." He identified Appellant's Exhibit 3 as the 2009, 2010, and 2011 Annual Performance Employee Evaluations which were all scored at 480.

50. He identified Appellant's Exhibit 4 as a document he had received a few years ago. This document showed the work typical of what Mills had done at the facility.

51. He identified Appellee's Exhibit 7 as the suspension letter that had issued to Mills, which Sewell believes he had signed.

52. **Steven Potts**, who since September of 2007 has been an Internal Affairs Investigator with the Internal Investigations Branch (IIB), was the next witness. Potts conducts internal affairs investigations and background checks for the Justice Cabinet. In his previous employment he served for five and one-half years as a Police Officer for the City of Lexington.

53. Potts conducted the Otis Mills investigation and thereafter generated a report. In April 2012 a complaint had been filed and the case was assigned to him. The allegations were that Mills had been gambling through Michael Wall. Potts conducted and recorded a series of interviews with individuals.

54. Wall, in his interview, stated he placed bets for Mills with his friend, whom he described as a bookie. The bookie placed bets through a website. If Mills lost the bet, Wall collected money from Mills and delivered it to his friend. If Mills won the bet, he collected the winnings and delivered it to Mills. The betting had begun during the NCAA basketball tournament.

55. At some point, Mills placed bets via text messages to Wall. Mills would bet on college football, college basketball, the NFL, and the NBA. Betting took place up to November of 2011.

56. During the interview, Wall showed Potts the series of texts he had on his cell phone. Potts photographed the text messages. He identified Appellee's Exhibit 2 as a true copy of the photographs he took of those texts. Wall estimated Mills placed between twenty-five and fifty bets each weekend. There were times Mills was not at the facility, but placed bets with Wall who was at the facility. Potts testified that he had obtained an admission from Mills that he placed bets through Wall, via telephone and text messages, while he (Mills) was at the facility.

The texts shown in Appellee's Exhibit 2 start October 23, 2011, and run through December of 2011.

57. Potts was excused by the Hearing Officer while counsel engaged in legal arguments pertaining to Appellant's objection to evidence. The proposed Appellee's Exhibit 8 was a disc containing the audio recording of unsworn statements of witnesses conducted during Potts' investigative interviews. After hearing the argument of counsel, the Hearing Officer ruled that the disc would be admitted for the limited purpose of determining the completeness of the Investigative Report and interview summaries. The disc would not constitute testimony from the persons interviewed, particularly since it contained unsworn statements.

58. Appellant renewed his objection to admission of the Investigative Report on the basis of hearsay. The Hearing Officer ruled Potts can testify about his observations of what the individuals interviewed told him, and how he compiled his report. The proposed admission of the report was held in abeyance. Potts would be allowed to testify about what he did and how he conducted his investigation. The report itself will not be evidence of wrong-doing. The report may be examined to determine whether it was reasonably relied on by the Cabinet in its decision to impose discipline. If admitted, the use of the report in this hearing will be extremely limited. Following such ruling, Potts returned to the hearing room.

59. Potts testified he does not work for DJJ. He was hired directly by Barney Kinman, who is his boss. IIB is a bureau assigned directly to the Secretary of the Justice Cabinet. The office was formed about 2001 as a result of a federal consent decree. In 2004, when the consent decree dissolved, the office was kept in place and operates independently of DJJ.

60. The interviews he conducted were not statements taken under oath.

61. Shane Bowling told Potts he knew Mills was betting with Michael Wall. Bowling did not know the extent of the betting, however, he related an incident pertaining to Wall.

62. James Roberts told Potts that he had seen Wall in an office on the phone. When he approached Wall he noticed Wall had a sheet of paper with bets listed on both sides. Roberts had previously admonished Wall not to be in the office so often as he needed to be supervising on the floor. Roberts knew that Wall and Mills placed bets and that this activity took Wall away from his duties. Roberts had taken the matter to Ron Long.

63. Potts' interview of Michael Mangum revealed Mangum had no knowledge of the gambling activity.

64. Ron Long told Potts he had knowledge Mills had been gambling with Wall. Issues had been raised by Bowling and Roberts that such activity affected their ability to supervise Wall.

65. Wall had given Potts a video showing Mills placing a bet with Wall while in Mills' office. Potts requested Wall provide copies of his personal cell phone records. Those records were produced, which Potts identified as Appellee's Exhibit 1.

66. Following completion of the interviews, Potts typed up a summary of each interview and then typed up his report. The report consists of his summary of facts. He made no conclusions or recommendations. The report, which he identified as Appellee's Exhibit 9, was provided to the requesting Agency, DJJ. The report was admitted into evidence for the limited purpose previously stated by the Hearing Officer.

67. **Joslyn Olinger-Glover** was the next witness. Olinger-Glover is the Division Director of Administrative Services for DJJ. She described the extent of her duties including oversight of four branches.

68. During the summer of 2012, the Personnel Branch received a request for discipline. That request had followed completion of the IIB Investigative Report and pertained to allegations of gambling by Mills.

69. She notified Commissioner Davis that the request packet had been received. She then testified about the process by which discipline is requested and processed.

70. Subsequently, a meeting was held in the Commissioner's office. In attendance were Commissioner Hasan Davis, Deputy Commissioner Smith-Jones, Deputy Commissioner McGuire, Director Sewell, and Director Olinger-Glover. Davis sought feedback from all in attendance regarding recommendations for discipline. He advised he was leaning to an intent to dismiss. Smith-Jones agreed. Sewell recommended a three to five-day suspension.

71. Olinger-Glover was instructed to have Personnel draft an intent to dismiss letter. Sewell was instructed to make certain a request for discipline issued with reference to Wall.

72. An intent to dismiss never issued. The Personnel Branch received a direct order from Smith-Jones that discipline would be a twenty-day suspension. She identified Appellant's Exhibit 7 as the suspension letter issued by Commissioner Davis.

73. She identified Appellee's Exhibit 10 as DJJ Policy 102, Employee Code of Ethics. The suspension letter identified paragraphs C, I, and J as having been violated by Mills.

74. She identified Appellee's Exhibit 11 as DJJ Policy 104, Employee Code of Conduct. She identified paragraphs A, C, F, I, and S as having been identified in the suspension letter as having been violated by Mills.

75. Olinger-Glover testified there is an internal pilot project known as the "Discipline Matrix." It is an employee conduct matrix proposed to be used in evaluating disciplinary action issued by the Commissioner's office. It is an attempt to objectively review conduct, mitigating factors, past discipline, and whether anything happened as a result of policy violation or misconduct. In review of Appellant's Exhibit 5, she noted the document shows the Discipline Matrix had been referred to in this matter and a suggested discipline level had been recommended that was higher than a twenty-day suspension. However, the Discipline Matrix was not ultimately used in issuing this suspension. The pilot project did not begin until sometime in 2011. It is a device that is used internally.

76. She identified Appellant's Exhibit 6 as the August 8, 2013 disciplinary letter with attached documents, signed by Commissioner Davis, that had been issued to Kendall Williams. Williams was a Facility Superintendent who had placed a \$100 bet with a youth in his facility. He received a ten-day suspension.

77. She identified Appellant's Exhibit 7 as a Certification of Personnel Records – Michael Mangum, with attached April 26, 2011 disciplinary letter. Mangum had received a five-day suspension for misconduct as a result of inappropriate horseplay toward coworkers.

78. She identified Appellant's Exhibit 8 as a Certification of Personnel Records – Kenneth Hartman, with attached disciplinary letter of April 29, 2008. Superintendent Hartman had received a ten-day suspension for poor work performance and misconduct.

79. She identified Appellee's Exhibit 12 as the AYDC Standard Operating Procedure, Employee Code of Conduct, Policy No. 104.

80. The next witness was **Diana McGuire**, who, for nearly two years, has been Deputy Commissioner, Operations, DJJ. She described her duties, which included oversight of facilities and the AYDC.

81. In April 2012 she received a telephone call from Gary Sewell. He described how Mike Wall, a Youth Worker at AYDC, had disclosed to him that Wall had taken bets from Mills; that the situation was a problem and Wall felt he had been retaliated against in the nature of a shift change. McGuire reported the matter to IIB.

82. After the IIB report was completed, and at the direction of McGuire, Sewell sent in a request for major disciplinary action. Upon receipt, McGuire sent it through the normal process.

83. McGuire had participated in a meeting with Commissioner Davis, Smith-Jones, Olinger-Glover, and Sewell. They discussed recommended discipline for Mills. McGuire felt a suspension was proper. The conversation then turned to an intent to dismiss. Someone indicated the Discipline Matrix had been used, which had suggested a dismissal. That troubled McGuire as the Matrix had not been used for past discipline nor was it currently part of the disciplinary procedure. Sewell and McGuire did not support an intent to dismiss. The Commissioner did not necessarily want to dismiss Mills, but said he would look at it further. Nothing had been decided by the end of that meeting.

84. Mills was a veteran, a good employee, and had no prior discipline. No children were harmed in this matter. She felt a fifteen to twenty-day suspension would be appropriate as Mills compromised his ability to supervise the facility as a result of his behavior.

85. The Commissioner made the final decision to issue a twenty-day suspension.

86. McGuire testified that changes at AYDC were positive due to the efforts of Mills and his staff.

87. **Alfreddie Hasan Davis** was the next witness. Davis has for nearly two years been the Commissioner of Juvenile Justice in DJJ.

88. It was Deputy Commissioner McGuire who informed Commissioner Davis of Mills' betting activities. She related the conversation she had with Gary Sewell, and Sewell's conversation with Michael Wall. The Commissioner decided to move forward with an investigation.

89. Commissioner Davis reviewed the Investigative Report. The Report confirmed his fear that one of their exemplary superintendents engaged in a level of behavior that could jeopardize the work of the Agency: moving from a Corrections model to a Treatment model.

90. Commissioner Davis called a meeting, attended by McGuire, Olinger-Glover, Smith-Jones, and Sewell. The Commissioner did not want to react solely on his own belief, but wanted the input of others. He indicated he would probably issue an intent to dismiss, although without a motive to necessarily fire Mills. He wanted to place everyone on notice. Davis considered Mills an exceptional member of the team. Sewell and McGuire indicated they were

bothered by an intent to dismiss. Davis told them he would give it more consideration. He thereafter directed an intent to dismiss letter be prepared.

91. He was contacted by McGuire and Smith-Jones who advised there might be good reason to issue something less than an intent to dismiss. The Commissioner told them he had looked at the matter more objectively, and was okay with a fifteen-day suspension that they had recommended.

92. Once he returned to his office, he reviewed the matter of recommended discipline for Wall. That recommendation was a fifteen-day suspension which the Commissioner approved. However, he realized this discipline would be at the same level as that prepared for Wall. Because of Mills' status and standing, there had to be a delineation to show the level of responsibility, and that based on such level, grade, and seniority, he decided Mills would be issued a twenty-day suspension.

93. Commissioner Davis identified Appellee's Exhibit 7 as the suspension letter he had signed. He had reviewed the policies cited in the letter and agreed such policies had been violated. Working with youth is very important work. The ability to set a standard that other people can follow has to be impeccable. If one violates policy, there has to be an expectation there will be some action from that, and then everyone can move past it. If at this level people fall down, and are able to get up, it shows others that the Department is clear, does not hold favorites, holds everyone accountable, and moves forward with the work. A twenty-day suspension of Mills was warranted.

94. In his review of the discipline letter issued to Mr. Williams, Commissioner Davis stated he had not made the recommendation in that case. However, that case involved a single incident of gambling. Mills had engaged in a significant amount of illegal activity. The expectations he held for Mills were very different. Furthermore, there was a video showing Mills had placed a bet from his own office.

95. The Appellee's case in chief was closed.

96. The first witness for the Appellant was **Michael Mangum**. Since 1998, Mangum has been employed by DJJ. In July of 2011, he became Superintendent I at the AYDC. Mills is his supervisor.

97. When he first began work at Adair, he saw the facility and staff were focused on treatment on both sides of that facility. He had never seen that before. He himself got support from Mills to do what he had to do.

98. Investigator Steve Potts from IIB interviewed Mangum. "I couldn't tell him a thing." Mangum had never heard so much as a rumor about gambling and knew nothing of the incidents.

99. **Amy Cundiff**, who since September 1, 2000, has been the Fiscal Manager at AYDC, was the next witness. She described her duties. The employee atmosphere at AYDC was very relaxed. The Center, located in a small town, has a family atmosphere. Mills had an open door policy making all employees feel comfortable. That did not exist before Mills came to the facility. She too had been interviewed by Steve Potts.

100. At one time, Shane Bowling had been her boyfriend. One night he came home frustrated. He did not want to work weekends. He stated, "I don't give a damn what he does, as long as I don't have to work on weekends." Bowling had referred to Mills' gambling activities.

101. Michael Wall had come into Cundiff's office one day and said he and Bowling were thinking about taking over the bets instead of bringing them to the bookie. Cundiff told Wall that Shane would have no part of that because he did not have any money and she paid enough of his bills as it was.

102. **Brent Kimbler**, who since August 16, 2011, has been a Youth Worker Supervisor at AYDC, testified. He has been at the facility since February 2001 when it opened.

103. On Sunday/Monday shifts, Wall spent a lot of time in the office while Kimbler worked out on the floor. Kimbler was, however, able to do his job and cover his duties.

104. During football season in the fall of 2011, Wall had received texts on his cell phone while in the supervisor's office. Wall asked Adrian Hughes (third shift supervisor) and Kimbler what they thought about who would win the games that weekend. Wall indicated he wanted the information because he and his partner were going to make bets with a bookie. This happened every Sunday during football season.

105. During a monthly supervisors' meeting, Mills and Long indicated staff were not to take cell phones back on the floor. However, Wall continued to do so.

106. After a couple of months, Wall received a telephone call. He looked at Kimbler and said it was Mills wanting to make a bet for Wall to give to his bookie.

107. Prior to the third day of hearing, Appellant had filed in the record his Notice advising he would not be cross-examining Michael Wall on October 29, 2013.

108. The next witness was **Otis Mills**. Mills began employment as a Counselor in the Department of Juvenile Justice in March 1999. He was promoted to Assistant Superintendent at the Laurel Juvenile Detention Center in November 2001. Thereafter, in April 2005 he became the facility's Superintendent. In October 2005 he was temporarily assigned to the AYDC where on February 2006 he became its Interim Superintendent. He was then promoted to Superintendent in October 2006.

109. Prior to his employment with DJJ, Mills had been a residential manager with the Kentucky Baptist Home for Children in Somerset, Kentucky. Previous to that employment, he had been an Investigator for Children Services in Hamilton County, Ohio.

110. He graduated from Cumberland College in 1994 where he obtained a degree in Psychology and Social Work. In 2006 he earned an MA degree in Criminal Justice from Boston University.

111. He identified Appellant's Exhibit 9 as his own Annual Employee Performance Evaluation for 2008. That year he had received a rating of 465 which is in the "Outstanding" category.

112. He received the Residential Employee of the Year Award from the Department of Juvenile Justice in 2007. In 2010 he had been recommended for "Best in the Business" for publication in Corrections Today. The AYDC received an award as Facility of the Year in 2010.

113. Mills testified that Michael Wall was not just a "go-between." It was November or December of 2009 when Wall had been in the Appellant's office. They were speaking on a social basis and each was aware that the other enjoyed playing on-line poker at home. Wall mentioned that he bet on ballgames with a friend and would probably take Appellant's bets, if Mills wanted to place same. Mills did not place a bet at that time. Wall particularly liked to place bets on the University of Kentucky "Cats." Wall and Mills gave each other betting advice. Mills did not force Wall into a situation to do what he did not want to do.

114. Appellant had grown up in Las Vegas. To him, a discussion of a betting line was no big deal. It was a regular topic of discussion among AYDC employees and supervisors. Bowling had on a number of occasions offered to take half of Mills' bets, but would always back out.

115. The decision to move Wall to third shift had been made by Long and Roberts. Long and Roberts discussed their decision with Mills and Appellant agreed with that decision. The decision to move Wall was not a “collective” decision among the three.

116. In the spring of 2010, the March Madness Tournament was ongoing. Appellant rode home with Shane Bowling and they discussed the betting line on the UK Cats. Mills told Bowling he would call Wall to see if his friend could give them a line on the game. Bowling offered to take half of Mills’ bet.

117. Appellant called Wall, who in turn called his friend. Wall then called Mills. Mills placed a \$50 bet which was the first bet he made through Wall. Bowling did not take half of the bet.

118. During that tournament, Appellant bet on three or four games. He placed no further bets until the fall of 2010 for college and NFL games.

119. During 2010, he bet four to five games a week. Appellant communicated with Wall directly at work or through telephone calls. Wall also called the Appellant. It was Mills’ opinion that nothing disrupted work because the amount of time per each betting conversation was very minimal. Initially Appellant had called Wall on Wall’s breaks.

120. Mills stated he had not bet throughout the week until 2011. That year was the peak of his betting activity.

121. Sometime during the end of 2010, Wall’s friend gave Wall the website information for the betting lines on games. Wall then provided the website information to Appellant. Appellant checked out the betting lines then texted his bets to Wall. All Wall had to do from that point was forward the texts to his friend. Each transaction took a matter of seconds.

122. In early 2011, Appellant had gone through a rough time in his life and in his relationship with his wife. He was saved on January 1 and began regularly to attend church. In the Fall of that year, he and his wife filed for divorce and bankruptcy. He was now alone and had a great deal of time on his hands. It was at that point that the betting started again. He admitted he “made some pretty poor decisions.”

123. He identified Appellee’s Exhibit 10 as a copy of Wall’s telephone records (Appellee’s Exhibit 1) which Appellant had reviewed and marked with his comments. He had reviewed this exhibit, and based on Wall’s testimony about his work schedule, determined how many of the contacts listed on the exhibit were made while either he or Wall had been at work.

124. "From day one, I've acknowledged making a very poor mistake in terms of making a very poor decision. I've taken full responsibility from the very beginning." He did not feel the daily operations at work were ever affected by the betting.

125. According to Wall's testimony, his work schedule at that time was Sunday and Monday on first shift from 6:00 a.m. to 2:30 p.m.; Tuesday on second shift from 2:00 p.m. to 10:30 a.m.; and Wednesday on first shift from 6:00 a.m. to 2:30 p.m.

126. Appellant's Exhibit 10 shows the telephone calls made through Wall's phone, as well as when text messages originated and were terminated. "SMS" denotes a text message.

127. On the first page of that document, the Appellant had made a notation. There were 29 telephone calls, none of which had been made by Appellant. All such calls were made by Wall while he was at work. The document also shows that Wall received several texts at work from his wife on July 13.

128. The document shows over 399 telephone calls Wall received while Wall had been at work. None of those telephone calls involved the Appellant. Four other telephone calls involved Appellant, which had occurred during work hours.

129. Mills testified that between July 13, 2011, and January 28, 2012, there were 46 total telephone calls between he and Wall; 4 of which were while one or the other of them were "on the clock." Twenty-nine of the 46 were initiated by Wall to Mills. Seventeen of the 46 were initiated by Mills who returned telephone calls to Wall. The document also shows there were 35 to 40 text messages between them.⁷

130. This exhibit had been marked by Mills with x's through those phone calls and text messages on the days Wall was not at work. Mills testified that most of the telephone calls shown on this document did not involve Appellant.

131. On October 23, 2011, he had met with Bowling, Long, and Roberts. He denied having started the meeting with a profanity. Throughout the whole process there had been issues with Wall not accomplishing his work. Bowling and Roberts had addressed Wall on numerous occasions. They now told Mills that due to Mills' gambling through Wall, they could no longer do their job and supervise Wall. Mills told those at the meeting they needed to deal with and supervise Wall. Shane Bowling knew about betting activity long before this meeting. Mills assured them that he would take care of it and keep his betting "off the clock."

⁷ In later testimony, Mr. Mills stated that he had counted a notation showing an originating text message and a similarly dated and timed termination text message as two separate messages. Apparently, such notation shows the beginning and ending of a single text message.

132. Subsequent to the meeting, Mills asked Wall whether he could contact the friend directly and place bets in that manner. The last bet Mills placed was about November 3, 2012.

133. Approximately two weeks prior to a supervisor's meeting in April, it came up that Wall was not in accord with the treatment plan. Wall did not want the kids attending his church near his family, or for the group of kids which included one sex offender, to go out and take care of a little league field.

134. After the supervisor's meeting, Wall had come to the Appellant's office to inquire why his schedule had been changed. Mills told him the reason and that he should speak to either Bowling or Roberts. Wall then asked, "Why is it do what I say, not do what I do, around here?" Mills believed Wall had just made a veiled threat. He told Wall that if the supervisors approved a change back in his schedule, he would approve it. Otherwise there would be no change.

135. Appellant acknowledged he, with Wall, had placed bets with an unlicensed individual and that some of this activity occurred at the work facility. He stated, however, that activity did not affect the daily operations. While he believes he should be held accountable for his actions, he disputes whether the suspension for twenty days is fair in view of his years of unblemished service, and that the incidents did not affect work. He believes something less than twenty days would be more appropriate. He acknowledged that the activity "absolutely" put him and the facility in a vulnerable position.

136. Appellant's case was closed. The Appellee offered no rebuttal testimony. The Hearing Officer, by separate Order, issued a briefing schedule and requested closing arguments of the parties be placed in writing.

FINDINGS OF FACTS

1. Otis Mills, the Appellant, is the Superintendent of the Adair Youth Development Center (AYDC). He has been performing those duties on an interim and permanent basis since February of 2006. During his employment Mr. Mills received an Employee of the Year Award from the Department of Juvenile Justice in 2007. He has received Annual Employee Evaluations in the "Outstanding" range during 2008, 2009, 2010 and 2011 (with scores of 465, 480, 480, and 480 respectively). AYDC was awarded a Facility of the Year recognition in 2010. Appellant has had no prior disciplinary actions against him.

2. Under Mills' supervision the atmosphere for the employees at AYDC was cordial and familial. Many discussed sports topics of the day to pass the time. Sports and betting lines were regular topics of discussion.

3. Michael Wall has, since 2002, been employed as a Youth Worker Supervisor at AYDC. In his employ he came into contact with Mills on an almost daily basis.

4. In the spring of 2010, during the time of the NCAA men's basketball Final Four, Mills, while riding in a vehicle with Shane Bowling (Youth Services Program Supervisor), telephoned Wall at work and inquired whether he knew anyone who could give him a "line" on that night's Kentucky basketball game. Wall contacted an individual he knew, obtained the information, and passed same onto Mills.⁸ Mills asked Wall to place a \$50 bet on the game for him. Wall placed the bet. This was the first bet placed by Mills through Wall. Mills placed bets on three or four games during that tournament and thereafter placed no bets until the 2010 college football season.

5. Appellant communicated his bets to Wall directly at work through telephone calls. At some point in 2010, Mills had been provided information about a website that gave betting lines. Mills texted his bets to Wall, then later texted the bets directly to the bookie and sent copies of these texts to Wall.

6. Appellant has admitted he placed sports bets while at work. "From day one, I've acknowledged making a very poor mistake in terms of making a very poor decision. I've taken full responsibility from the very beginning." He admitted to Gary Sewell, Division Director of the Southeast Region, that he had placed bets through Wall. He admitted to Steven Potts, the Internal Affairs Investigator, that he had placed bets with Wall while at work and while away from the AYDC.

7. Appellant's betting practices were known to many of the employees of AYDC (refer to the testimony of: Michael Wall; Shane Bowling; James Roberts; Ron Long; Amy Cundiff; and Brent Kimbler).

8. Shane Bowling, who was Wall's supervisor, told Wall to stop taking and placing bets while at work. James Roberts, Youth Services Program Supervisor, found Wall in the fall of 2011 on his cell phone in the office placing bets. Roberts told Wall to stop taking bets and to start doing his job.

9. Ron Long, currently Assistant Supervisor at AYDC, was approached by Bowling in 2011. Bowling related he could no longer supervise Wall as Wall had been using a cell phone while on duty, placing bets for Mr. Mills. James Roberts approached Long and related his discovery of Wall on the cell phone accompanied by a list of sports teams with dollar amounts shown on the document.

⁸ At times throughout the hearing, the third party with whom Wall came into contact, was referred to as the "bookie."

10. Long arranged a meeting with Mr. Mills, Mr. Roberts, and Mr. Bowling. They related to Mills their concerns of how the betting through Mike Wall interfered with Wall's work and their ability to supervise him. Mr. Mills admitted to gambling and told those present he would stop such practice at work.

11. Mills placed bets during the 2010-2011 college basketball season, and the 2011-2012 college and professional football and college basketball seasons. The betting ceased sometime in 2012.

12. This matter was investigated by the Internal Investigations Branch, following a complaint by Michael Wall. In the summer of 2012, following issuance of an investigative report by Steven Potts, the Personnel Branch of the DJJ received a request for discipline. Joslyn Olinger-Glover, DJJ Division Director for Administrative Services, notified Commissioner Hasan Davis of the arrival of this packet.

13. A subsequent meeting was attended by Commissioner Davis, Deputy Commissioner Smith-Jones, Deputy Commissioner Diana McGuire, Director Gary Sewell, and Director Olinger-Glover. They engaged in a discussion in the matter of the proposed discipline for Otis Mills.

14. Commissioner Davis had been "leaning" toward the issuance of an intent to dismiss letter, to which Smith-Jones agreed. The Commissioner indicated he did not necessarily want to dismiss Mills, but to call attention to this situation which warranted discipline. Mr. Sewell indicated he favored a three to five-day suspension. Ms. McGuire also favored some type of suspension.

15. Following the meeting, Commissioner Davis directed an intent to dismiss letter be drafted. McGuire and Smith-Jones later approached the Commissioner and advised there may be good reason to issue something less than an intent to dismiss. The Commissioner agreed that a fifteen-day suspension would be more appropriate. However, when he later saw a recommendation had been made to suspend Michael Wall for fifteen days (which suspension he approved), he decided Mills' discipline required a higher level. He approved a twenty-day suspension for Mills based on Mills' level of responsibility and seniority, taking into consideration his prior exemplary record and the improvements that had occurred at AYDC under Mills' supervision.

16. On November 26, 2012, Commissioner Davis signed and issued a letter that advised Appellant that he would be suspended from duty and pay for a period of twenty working days (Appellee's Exhibit 7). The disciplinary action was based on 101 KAR 1:345, Section 1,

for **Misconduct**. The letter also cited alleged violation of KRS 11A.020(1)(a) and (c); Executive Branch Ethics Code Executive Order 2008-454(3)(ii)(iv); Department of Juvenile Justice Policy #102, "Employee Code of Ethics", I., IV. (C., I. and J.); Department of Juvenile Justice Policy #104, "Employee Code of Conduct", I., IV. (A., C., F., I. and S.); and Adair Youth Development Center Standard Operating Procedure #104, "Employee Code of Conduct", I., III. (C., F. and S.).

17. Justice and Public Safety Cabinet-Department of Juvenile Justice-Policy and Procedures-Employee Code of Ethics-Policy Number DJJ 102 (Appellee's Exhibit 10), Justice Cabinet Department of Juvenile Justice-Policy and Procedures-Employee Code of Conduct-Policy No. DJJ 104 (Appellee's Exhibit 11), and Justice Cabinet-Department of Juvenile Justice-Adair Youth Development Center-Standard Operating Procedures-Employee Code of Conduct-Policy 104 (Appellee's Exhibit 12) were all in full force and effect at the time of the activities alleged to have been engaged in by Appellant.

The Kentucky Personnel Board has been delegated the responsibility of promulgating comprehensive administrative regulations pertaining to executive branch employee disciplinary matters. KRS 18A.075(1). This includes regulations for the classified service governing employee suspensions. KRS 18A.0751(1)(d). Furthermore:

"No administrative body, other than the Personnel Board, shall promulgate administrative regulations governing the subject matters specified [in KRS 18A.0751(1)]. KRS 18A.0751(2)(c).

The Kentucky Personnel Board has promulgated administrative regulations pertaining to disciplinary actions, as may be seen in 101 KAR 1:345. Through such regulation:

"Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties." 101 KAR 1:345, Section 1.

Appointing authorities, and the agencies they govern, need only cite either "lack of good behavior" or "unsatisfactory performance of duties" to initiate and impose disciplinary action. It is not necessary for such agency to have promulgated or published any internal policies. Any behavior or activity that constitutes a "lack of good behavior" or the "unsatisfactory performance of duties" will give sufficient cause for disciplinary action.

The November 26, 2012 suspension letter issued by the Appellee (Appellee's Exhibit 7) specified "Misconduct" as the basis for the discipline. "Misconduct" indeed is one such action or activity that constitutes "Lack of Good Behavior." Appellant admitted in his testimony that he engaged in gambling activities on state time, while on state property, with a subordinate employee, and that at times he utilized state equipment (computer, internet communication lines, telephone) to facilitate such activity.

Appellant's citation of KRS 15A.065 and contention that the Department of Juvenile Justice may not promulgate regulations, while correct with reference to the cited statute, fails to take into account that in securing juvenile detention facilities:

“The Department of Juvenile Justice shall promulgate and enforce administrative regulations to govern at least the following aspects of the operation of facilities: administration; personnel; training and staff development; rules and discipline...”
KRS 15A.210(1)(a, b, c, n).

Appellant also cites KRS 13A.100(1) to support his position that the policies upon which the Appellee relied in imposing discipline are a nullity as they were not made into administrative regulations. However, the complete reading of this statute shows Appellee had the authority to promulgate internal disciplinary policy without promulgating a regulation, as such discipline had overall direction by statute. KRS 13A.100(5); KRS 18A.095.

Finally, Appellant argues that reliance of the policies in having issued the suspension is in violation of the provisions of KRS 18A.095(8). The Hearing Officer finds Appellee complied with each requirement of that section of the statute. Appellant, by the letter of November 26, 2012 (Appellee's Exhibit 7) had been notified in writing:

- **of the suspension:** the opening paragraph sets out issuance of a 20-day suspension;
- **the effective date of the suspension:** the beginning and ending dates of the suspension are clearly set out;
- **the specific reason for the action, including: 1. The statutory or regulatory violation.** The regulatory violation cited was: 101 KAR 1:345, Section 1-Misconduct. Nothing more is required to fulfill this requirement.⁹
- **that he has the right to appeal to the board within 60 days:** This is set out on page 3, the final paragraph of the letter.

18. Otis Mills timely filed his appeal of this disciplinary action with the Kentucky Personnel Board.

⁹ Subsections 2, 3, and 4 of KRS 18A.095(8) were also fully complied with by the Agency in the November 26, 2012. As Appellant challenged the matter pertaining to failure to rely on a valid regulation, only that portion of the statute is discussed above in subsection (8)(c)(1).

CONCLUSIONS OF LAW

1. A classified employee with status shall not be suspended except for cause. KRS 18A.095(1). Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties. 101 KAR 1:345, Section 1. A suspension shall not exceed thirty days. 101 KAR 1:345, Section 4(1).

2. Otis Mills, the Appellant, is a classified employee in his position as Superintendent of the Adair Youth Development Center (AYDC). His duties included the supervision of all subordinate employees who worked at AYDC, including Michael Wall, Youth Worker Supervisor.

3. Appellant admitted that he placed sports bets while at work, that he had placed a number of bets through employee Michael Wall while at work, and that he had used a state computer and internet service for that purpose. Appellant also used the facility telephone. Appellant also admitted in his testimony that he believes he should be held accountable for his actions. Such admissions and evidence of gambling constitute good cause for the Appellee to have initiated disciplinary action, as such conduct constituted, "lack of good behavior." 101 KAR 1:345, Section 1.

4. The evidence shows that prior to this disciplinary action, Appellant had a spotless disciplinary record and an exemplary record of performance of his duties. However, a preponderance of the evidence has shown, and by Appellant's own admission, that the gambling activity on the premises directly engaged a subordinate employee. This was highly inappropriate.

5. Commissioner Hasan Davis explained in detail the procedure he employed and the thought process by which he arrived at issuance of a twenty-day suspension. His severe disappointment in the failing of one of his exemplary employees, coupled with the fact that Mr. Mills was among his outstanding superintendents, initially prompted the Commissioner to consider issuing an intent to dismiss. However, after meeting with others, and giving further consideration to the matter, he considered a suspension to be the more appropriate discipline.

6. At first Commissioner Davis directed a fifteen-day suspension be issued. However, when he was reminded that a fifteen-day suspension had been recommended for Michael Wall, he justifiably decided that Mills, in the role of Superintendent and supervisor, must be held to a higher example for subordinate employees. He, therefore, recommended and issued a twenty-day suspension.

7. Appellant's use of Wall to facilitate his gambling activities, while not appearing on the surface to have affected the performance of duties at the facility, indeed compromised Appellant's ability on another level: to supervise subordinate employees. He placed a subordinate employee in a most untenable position, making Wall the conduit for such activity. Whether Wall felt he could not extricate himself from being used in this manner, the mere activity of the Appellant itself constituted lack of good behavior.

8. By gambling with a subordinate employee and doing so on occasion from and to a state facility, Appellant engaged in unprofessional conduct. His having contacted Wall at various times while Wall was on duty, disturbed Wall and/or interrupted Wall from performance of and attention to his duties. Wall had to devote time to receipt of call and texts from Mills, research of betting lines, relay of information to Mills, placement of bets with the bookie, delivery of wagers to the bookie and of winnings to Mills. The evidence clearly showed that many of the upper level staff at AYDC were aware of Appellant's gambling activities. It is unknown from the evidence, however, whether such knowledge permeated the facility to the point of entering the consciousness of the youth therein.

9. A preponderance of the evidence demonstrated that Appellant violated not only 101 KAR 1:345, Section 1, but also:

a. Department of Juvenile Justice – Employee Code of Ethics – Policy Number DJJ 102, I., IV. (C., J.) (Appellee's Exhibit 10); Department of Juvenile Justice - Policy and Procedures - Employee Code of Conduct – Policy Number DJJ 104: I., IV. (F., S.) (Appellee's Exhibit 11); and Department of Juvenile Justice - Adair Youth Development Center - Standard Operating Procedures - Employee Code of Conduct - Policy Number 104, I., III. (F., S.) (Appellee's Exhibit 12).

10. The Appellee has demonstrated by a preponderance of the evidence that the twenty-day suspension of Appellant was imposed for just cause and was neither excessive nor erroneous under the circumstances.

11. Appellee's Exhibits 3 and 4 were not admitted into evidence, nor were they considered by the Hearing Officer in his Findings of Fact, Conclusions of Law and Recommended Order.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Personnel Board that the appeal of **OTIS MILLS VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2012-277)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13.B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each Party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer Roland Merkel** this 14th day of January, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Adams Adkins
Hon. Paul Fauri